No. 25 Orig.

IN THE

SUPREME COURT OF THE UNITED STATES

IN THE MATTER OF THE PETITION OF
THE INDIANA TRANSPORTATION
COMPANY FOR THE USE OF PETITION

PETITION

CHARLES E. KRAMER,
Petitioner

Our Reference No. Petition, Orig.

IN THE

Supreme Court of the United States

In the Matter of the Petition of THE INDIANA TRANSPORTATION COMPANY for Writ of Prohibition.

PETITION FOR WRIT OF PROHIBITION.

To the Honorable the Judges of the Supreme Court of the United States:

The petition of the Indiana Transportation Company against the Honorable Kenesaw M. Landis, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, sitting in Admiralty, respectfully represents:

First. That this petitioner is and was at the different times hereinafter mentioned, a corporation organized and existing under the laws of the State of Indiana, with its principal place of business at Michigan City, Indiana.

Second. That on the 21st day of August, 1915, James F. Bishop, as administrator of the estate of Earl H. Dawson, deceased, filed his libel in the District Court of the United States for the Northern

District of Illinois, Eastern Division, in admiralty against this petitioner, the St. Joseph-Chicago Steamship Company and the Dunham Towing & Wrecking Company, in which it was alleged that on the 24th day of July, 1915, the St. Joseph-Chicago Steamship Company, a corporation, was the owner of the steamer known as the Eastland, and your petitioner, the Indiana Transportation Company, was the charterer of the said steamer, and that they accepted Earl H. Dawson as a passenger on the Steamer Eastland and so carelessly, negligently, etc., managed the said steamer that she tipped over in the Chicago river, by reason whereof the said Dawson was killed, as will more fully appear from a copy of the libel hereto attached and made a part of this petition.

THIRD. That after the filing of the said libel a citation was issued which was served upon your petitioner, and thereupon on the 2nd day of October, 1915, your petitioner filed its exceptions to the said libel, alleging briefly that the said libel did not set forth a cause of action against your petitioner, as will more fully appear from the said exception made a part of this petition.

FOURTH. That on the 24th day of July, 1916, by leave of court given by the Honorable Kenesaw M. Landis, sitting as Judge of the District Court in which the said case is pending, the libelant, James F. Bishop, was permitted to join as co-libelants with him 373 other libelants represented in part by the said James F. Bishop as administrator, etc., and other administrators of the estates of deceased people who lost their lives as passengers of the Steamer

Eastland at the same time and in the same way that libelant lost his life, by reason of the capsizing of the Steamer Eastland, and that the co-libelants as administrators, represented different deceased men, women and children, and in addition thereto there were included a number of persons as co-libelants who sustained personal injuries and loss of property by reason of the capsizing of the said Steamer Eastland, all of which said administrators and persons suing for personal injuries, loss of property, etc., have separate and distinct causes of action for the loss and damage sustained by them, as alleged in said amended libel. That no process was prayed for or issued under said amended libel.

FIFTH. That the said amended libel also alleges that the Indiana Transportation Company was a corporation organized under the laws of the State of Indiana.

SIXTH. That at the time of the amending of the said libel the said Indiana Transportation Company was a foreign corporation and non-resident of the State of Illinois, and not doing business in the said State, and therefore not subject to service upon it by process of the District Court of the United States for the Northern District of Illinois.

SEVENTH. Upon the filing of the said amended libel petitioner was ordered to plead to the same by the 2nd day of September, 1916, and that thereupon on the 2nd day of September, 1916, your petitioner filed its exceptions to said amended libel alleging that the 373 co-libelants were improperly joined with the original libelant, as will appear from a copy of

the said exceptions attached hereto and made a part of this petition.

EIGHTH. That on the 18th day of September, 1916, the said cause came on for a hearing before the Honorable Kenesaw M. Landis, Judge of the District Court, upon the amended libel and the exceptions of this petitioner to the same, and thereupon the court, upon a hearing, overruled the exceptions filed by your petitioner, and entered an order that your petitioner have twenty days in which to plead to said amended libel.

NINTH. That your petitioner is therefore compelled to answer the said amended libel or suffer a default and decree to be entered against it or to attend a trial and a hearing on each of the said claims of the 377 co-libelants, and it will thereby be put to great expense, annoyance and trouble.

Wherefore, petitioner prays that a writ of prohibition may issue against the said Kenesaw M. Landis, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, or any other Judge of the said court, from proceeding with the hearing of any of the 373 claims, or any and all other claims except the claim of the original libelant filed to recover for the death of said Earl H. Dawson, deceased.

CHARLES E. KREMER,
Proctor for Petitioner.

INDIANA TRANSPORTATION CO.,

By .....

President.

STATE OF INDIANA,
COUNTY OF LAPORTE. } ss.

On this 11 day of ~~September~~ October, 1916, before me personally appeared S. W. Larson, the president and an officer of the Indiana Transportation Company, the above named petitioner, and was sworn to the truth of the foregoing petition.

Wm. J. Westcott
Notary Public.

Seal

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

In Admiralty.

To the Honorable Judges of the District Court of the United States, in and for Said Division:

The libel of James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, against the St. Joseph-Chicago Steamship Company, a corporation, the Indiana Transportation Company, a corporation, and the Dunham Towing and Wrecking Company, a corporation, in a cause of damage, civil and maritime, alleges as follows:

FIRST. That the libelant is administrator of the estate of Earl H. Dawson, deceased, duly appointed and qualified to act as such.

SECOND. That on July 24, A. D. 1915, the St. Joseph-Chicago Steamship Company, a corporation, was the owner of the steamer known as the "Eastland," and had chartered said steamer to said Indiana Transportation Company, for the purpose of carrying passengers thereon to Michigan City, Indiana, from a point on the Chicago River, near, and just west of, the Clark street bridge which crosses said river, in the City of Chicago, County of Cook and State of Illinois, district and division aforesaid, and said Dunham Towing and Wrecking Company, a corporation, was the owner of a tug boat known as the "Kenosha," which was attached to said steamer "Eastland" by ropes and cables, at the point aforesaid on said Chicago River, and said

steamer and tug were then and there being used by said libelees in the business of commerce and navigation upon Lake Michigan and its tributary waters, including said Chicago River.

THIRD. Libelant, upon information and belief, alleges that on said 24th day of July, A. D. 1915, said St. Joseph-Chicago Steamship Company and said Indiana Transportation Company accepted as a passenger on said steamer said Earl H. Dawson, at the point aforesaid on said Chicago River, for the purpose of conveying said Earl H. Dawson as such passenger to Michigan City, Indiana, on said steamer, and while attempting so to do, then and there so carelessly, negligently, wilfully, wantonly, wrongfully and improperly so managed, operated and controlled said steamer that it then and there tipped over on its side in said Chicago River, and by reason thereof said Earl H. Dawson was then and there killed.

FOURTH. Libelant also alleges, on information and belief, that at the time and place of the tipping over of said steamer as aforesaid, said Dunham Towing and Wrecking Company so carelessly, negligently, wilfully, wantonly, wrongfully and improperly managed, operated and controlled its said tug boat while so attached to said steamer as aforesaid, that thereby, in connection with said wrongful, negligent and improper conduct of said other libelees, said steamer was then and there caused to tip over as aforesaid.

FIFTH. Libelant, not being advised of all that took place and of all conditions existing on and in connection with said steamer and tug at and before the time of the tipping over of the same as aforesaid,

and therefore reserving the right to claim the benefit of any faults causing such tipping over which may result on a full hearing herein, on information and belief alleges that said St. Joseph-Chicago Steamship Company and said Indiana Transportation Company, in addition to their negligent and wrongful conduct above set forth, were guilty of the following specific faults which caused said steamer so to tip over:

1. Said St. Joseph-Chicago Steamship Company and said Indiana Transportation Company were negligent in using a steamer which was, and which they knew, or by the exercise of proper care would have known to be, unsafe and unseaworthy.

2. That they were negligent in permitting a large number of passengers to board said steamer without attending to their duty to see that proper precautions were taken to protect said passengers from harm and injury.

3. That they were negligent in allowing a larger number of passengers to board said steamer than could safely and properly be carried thereon.

4. That they were negligent in not providing proper and competent servants to manage, control and operate said steamer.

5. That they were negligent in not providing sufficient employees to properly manage, control and operate said steamer.

6. That they were negligent in not providing proper ballast tanks and other apparatus and appliances to prevent said steamer tipping over.

7. That they were negligent in improperly operating, controlling and managing the ballast tanks.

apparatus and appliances which were provided on said steamer.

8. That they were negligent in allowing a large number of passengers to board said steamer, and in moving and attempting to move said steamer with the ballast tanks thereon partially or wholly unfilled with water.

9. That they were negligent in disconnecting the ropes and cables by which said steamer was attached to its dock.

10. That they were negligent in moving and in attempting to move said steamer when it was, and when they knew, or by the exercise of proper care would have known, that it was in an unsafe and improper condition to be moved.

11. That they were negligent in moving and in attempting to move said steamer in an unsafe and improper manner.

12. That they were negligent in allowing and in ordering said tug boat "Kenosha" to move and tow, and to attempt to move and tow, said steamer when said steamer was, and when they knew, or by the exercise of proper care would have known, that said steamer was in an unsafe and improper condition to be moved and towed.

13. That they were negligent in ordering and in allowing said tug boat "Kenosha" to move and tow and to attempt to move and tow said steamer under unsafe and improper conditions and in an unsafe and improper manner.

14. That they were negligent in not warning and ordering the passengers on said steamer to leave and disembark therefrom when they, said compa-

nies, knew, or by the exercise of proper care would have known, that it was unsafe and dangerous for such passengers to remain thereon.

15. That they were negligent in allowing passengers to board said steamer when they, said companies, knew, or by the exercise of proper care would have known, that it was dangerous and unsafe for such passengers to board same.

16. That they were negligent in permitting a large number of passengers to board said steamer without previously having had said steamer properly inspected and tested to determine whether such steamer was properly constructed and equipped and in proper condition to safely allow such large number of passengers to be thereon.

17. That they were negligent in permitting a large number of passengers to board said steamer when said steamer was not, and when they, said companies, knew, or by the exercise of proper care would have known, that said steamer was not properly constructed and equipped and in proper condition to safely allow such large number of passengers to be thereon.

18. That they negligently permitted a large number of passengers to board said steamer without having proper inspections and tests made to determine whether it was sufficiently stable and in proper condition to safely allow such number of passengers to be thereon, and permitted such large number of passengers to board same when it was not, and when they, said companies, knew, or by the exercise of proper care would have known, that it was not

sufficiently stable and in proper condition for such purpose.

19. That they negligently failed to provide sufficient and proper life-saving apparatus and equipment on board said steamer for the number of passengers permitted by them to board, and who did board, the same, and negligently failed to have properly accessible for such passengers such life-saving apparatus and equipment as was provided thereon.

20. That they negligently failed to use proper care to protect from harm and injury the passengers permitted by them to board said steamer, when they, said companies, knew, or by the exercise of proper care would have known, that the condition of said steamer was such that it was in danger of tipping over.

21. That they negligently permitted said steamer to be overloaded with a great amount of freight and supplies and other paraphernalia in addition to the large number of passengers permitted by them to be thereon, without taking proper precautions and exercising proper care to make said steamer stable and safe under such conditions for said passengers.

22. That they were warned of the danger of said steamer tipping over a sufficient length of time before it did tip over to have enabled them by the exercise of proper care to cause all or a portion of said passengers to safely disembark from said steamer before it tipped over and prevent it from tipping over, yet they carelessly, negligently and wilfully and wantonly failed to heed such warnings and to exercise such care.

SIXTH. And said Dunham Towing and Wrecking Company, in addition to its negligent and wrongful conduct above set forth, was guilty of the following specific faults which caused said steamer to tip over as aforesaid:

1. It negligently attempted to move and tow, and did move and tow, said steamer when it was not, and when it, said company, knew, or by the exercise of proper care would have known, that said steamer was not in a safe and proper condition to be moved and towed.

2. It negligently attempted to move and tow, and did move and tow, said steamer in an improper and unsafe manner.

3. It negligently managed, operated and controlled its said tug boat "Kenosha" while same was attached to said steamer.

SEVENTH. And libelant, on information and belief, further alleges that said Earl H. Dawson, deceased, left him surviving next of kin as follows: William Dawson, his father, Edward Nathaniel Dawson, his brother, and Lillian Edna Dawson, his sister, who are still living; and by reason of the death of said Earl H. Dawson, deceased, as aforesaid, his said next of kin have been and are deprived of their means of support and have been pecuniarily injured as a direct result of the death of said deceased.

Wherefore your libelant prays that process in due form of law according to the course and practice of this Honorable Court may issue against said St. Joseph-Chicago Steamship Company, a corporation, said Indiana Transportation Company, a corporation, and said Dunham Towing and Wrecking Com-

pany, a corporation, and that said St. Joseph-Chicago Steamship Company, a corporation, said Indiana Transportation Company, a corporation, and said Dunham Towing and Wrecking Company, a corporation, may be cited to appear and answer all and singular the allegations of this libel, and that upon final hearing this Honorable Court may find in favor of libelant's claim herein and decree payment thereof with interest and costs, and that this Honorable Court may grant such other and further relief as libelant may be entitled to receive in the premises.

JAMES F. BISHOP,
Administrator of the Estate of Earl H. Dawson, Deceased, Libelant.

HARRY W. STANDIDGE,
Proctor for Libelant.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

James F. Bishop, being duly sworn, says that he is administrator of the estate of Earl H. Dawson, deceased, libelant herein; that he has read the above and foregoing libel and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated to be alleged on information and belief, and as to such matters affiant believes it to be true.

JAMES F. BISHOP.

Subscribed and sworn to before me this 20th day of August, A. D. 1915.

IRA W. HURLEY,
(Seal) *Notary Public.*

Endorsed; filed August 21, 1915.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

James F. Bishop, Administrator of the estate of Earl H. Dawson, deceased,
vs.
St. Joseph-Chicago Steamship Company *et al.*
} No. 32236.

And now comes the Indiana Transportation Company, one of the defendants in the above entitled cause, and files its exceptions to the libel in said cause:

1st: That the said libel is based upon a right of action which does not exist under the maritime laws of the United States and that therefore this court has no jurisdiction of the cause of action stated in the libel.

2nd: That the said libel does not state any damages suffered by the libelant or those whom he represents.

C. E. KREMER,
Proctor for Defendant.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

James F. Bishop, Administrator of the estate of Earl H. Dawson, deceased, *et al.*
vs.
St. Joseph-Chicago Steamship Company, a corporation, *et al.*
No. 32236.

And now comes the Indiana Transportation Company, one of the respondents above named, and excepts to the amended libel of James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, in the following particulars:

1st: That the said amended libel is informal, contrary to the admiralty rules and procedure and contrary to law because it joins with the original libelant 373 additional libelants who have a separate and distinct cause of action from that of the original libelant and are therefore improperly joined.

2nd: Because the above named respondent cannot in law in this case be called upon to answer the said amended libel as to 373 additional libelants.

3rd: In all of which particulars the said amended libel is imperfect and insufficient and that the said respondent is not bound to answer the same as to the 373 additional libelants improperly joined to the original libel.

INDIANA TRANSPORTATION COMPANY,
By C. E. KREMER,
Its Proctor.

C. E. KREMER,
Proctor for Indiana Transportation Co.